

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	
Capability to All Americans in a	)	GN Docket No. 04-54
Reasonable and Timely Fashion, and	)	
Possible Steps to Accelerate Such	)	
Deployment Pursuant to Section 706	)	
of the Telecommunications Act of 1996	)	

**COMMENTS  
of the  
ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

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## SUMMARY

Despite significant obstacles, the deployment of advanced services is occurring in a reasonable and timely manner in areas served by rural ILECs. A recent OPASTCO survey reveals that members providing broadband can reach an average of 88 percent of their customers. Over 99 percent of respondents offer speeds in excess of 200 Kbps in both directions, and 75 percent offer different tiers of service. Nearly all use DSL technology to deliver services, while 20 percent complement DSL with unlicensed wireless technology, and 17 percent with cable. Penetration averages 13 percent, although those that bundle broadband with other services average 17 percent. The survey finds that 77 percent face at least one broadband competitor in their service area.

In order to encourage investment in broadband infrastructure, the Commission must reject the recommendation of the Universal Service Joint Board to limit support to primary lines. A primary line limitation would hinder the ability of rural carriers to continue making the investments in the modern network infrastructure that is necessary to deliver advanced services to their customers.

Rural ILECs need to retain the option to include DSL-based services in revenue pools, regardless of how these services are statutorily classified. Without pooling, many rural ILECs would be forced to significantly raise their rates for these services in order to recover their costs. This may cause many current DSL subscribers to cancel the service. In addition, without pooling, rural ILECs would find it far more difficult to expand their DSL-based services to the most remote customers.

Finally, the Commission should take steps to make the video market more accessible to rural ILECs, since bundling video with advanced services makes broadband

more economically viable to deploy. Also, accelerated depreciation rates would further encourage investments in network infrastructure.

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**I. INTRODUCTION**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Federal Communications Commission's (FCC) Notice of Inquiry (NOI) in the above-captioned proceeding.<sup>1</sup> OPASTCO is a national trade association representing over 560 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. § 153(37).

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<sup>1</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 04-54, Notice of Inquiry, FCC 04-55 (rel. Mar. 17, 2004) (NOI).

In addition to serving as incumbent local exchange carriers (ILECs), OPASTCO members are among the industry leaders in bringing new, innovative services to consumers in high-cost rural areas. OPASTCO estimates that over 90 percent of its members supply dial-up Internet access, and more than 85 percent provide broadband, using a variety of delivery mediums. Over 50 percent provide video services, primarily using either coaxial cable or digital subscriber line (DSL) technology. Also, nearly one-third operate competitive carriers, many of which provide data services.<sup>2</sup>

## **II. DEPLOYMENT OF ADVANCED SERVICES BY RURAL ILECS IS OCCURRING IN A REASONABLE AND TIMELY MANNER IN SPITE OF HIGHER DEPLOYMENT COSTS**

The NOI requests data on the status of high-speed and advanced services to consumers in rural areas.<sup>3</sup> Rural ILECs continue to make great strides deploying broadband, despite the higher costs and other challenges these carriers face. Rural ILECs must overcome factors such as sparse and dispersed populations, great distances between the customer and the central office “switch,” difficult terrain, and a lack of economies of scale. Compounding these challenges for rural carriers is the inability to spread costs over urban population centers, and the lack of access to the vast capital resources that are enjoyed by large carriers.<sup>4</sup>

OPASTCO conducted a survey of its membership in April 2004, which demonstrates that despite significant obstacles, rural ILECs have continued to make

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<sup>2</sup> These figures are based on a comprehensive survey of OPASTCO members, conducted in 2000.

<sup>3</sup> NOI, para. 30.

<sup>4</sup> See generally, *The Rural Difference*, Rural Task Force White Paper 2 (Jan. 2000), <<http://www.wutc.wa.gov/rtf>>. The same factors which make the provision of basic voice telephone service more difficult and expensive to provision in rural areas have similar effects on the deployment of advanced services.

advanced services available on an increasingly widespread basis.<sup>5</sup> The survey's findings are presented below.

Availability – On average, respondents have been able to make broadband available to 88 percent of their customers. More than half of respondents, 55 percent, have made broadband available to at least 95 percent of their customers. More than one quarter, 28 percent, can deliver broadband to 100 percent of their customer base.

Data Speeds and Tiered Rates – Nearly all respondents, over 99 percent, reported being able to deliver “advanced services,” *i.e.*, speeds of at least 200 kilobits per second (Kbps) in both directions. Almost 75 percent offer different tiers of service, providing different data speeds at different prices.<sup>6</sup>

Delivery Technology – Over 99 percent of respondents use DSL technology to deliver broadband to subscribers. Nearly two-thirds, 63 percent, utilize the DSL tariffs available in National Exchange Carrier Association (NECA) pools, while 35 percent price their DSL services independently.

A number of rural ILECs use additional technologies to expand the availability of their broadband services. Unlicensed wireless is used by 20 percent of respondents, while licensed wireless is used by only four percent. Cable, including hybrid fiber-coax networks, is used by 17 percent of respondents. Fiber is deployed all the way to the customer premises by seven percent of respondents. Satellite is also used by seven

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<sup>5</sup> OPASTCO sent out 310 surveys to its members via e-mail. Some of the recipients were contacts for multiple operating LECs. With 107 responses received, the response rate was above 33 percent. Only two respondents indicated that they do not currently offer broadband. Figures provided herein reflect the responses of those that provide broadband.

<sup>6</sup> In addition to their high-speed and advanced service offerings, several companies reported providing a highly popular tier of 128 Kbps symmetrical, priced at \$25-\$30 per month. While not meeting the Commission's definitions for high-speed or advanced service, these offerings allow customers to have always-on service that costs only a few dollars more than dial-up Internet access, but is twice as fast.

percent of respondents.

Penetration Rates and Bundling – The survey finds that the average penetration rate of broadband among the customers to whom it is available is 13 percent. Penetration varies widely among service areas, from only one percent in some cases to as high as 50 percent in others.<sup>7</sup> Companies that bundle broadband with other services (39 percent) are presently outnumbered by those that do not (61 percent). However, those who do bundle broadband with other services, such as local or long distance voice service, video, or wireless, have higher penetration rates, at 17 percent on average. Companies that do not bundle experience an average penetration rate of 10 percent.

Competition – A large majority of rural ILECs face competition for their broadband offerings, and this competition will only continue to grow. The survey finds that 77 percent of respondents face at least one competitor, while 38 percent report facing two or more competitors. Only 23 percent report that there is currently no alternative broadband provider in their ILEC service territory. As additional satellite services targeted specifically at rural residential<sup>8</sup> and business<sup>9</sup> subscribers are expected to be deployed later this year, the level of broadband competition in rural areas will likely increase substantially in the near future. Broadband over power line technology also has

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<sup>7</sup> A report from the Pew Internet & American Life Project suggests that demographic factors may influence Internet use. The report notes that senior citizens and those with lower incomes are less likely to go online, and that both groups compose a larger percentage of the population in rural areas than in non-rural areas. See “Rural Areas and the Internet” (rel. Feb. 17, 2004), <<http://www.pewinternet.org/reports/toc.asp?Report=112>>.

<sup>8</sup> WildBlue Communications, Inc. has formed a distribution partnership with the National Rural Telecommunications Cooperative to provide satellite broadband services to rural homes and small offices beginning later in 2004. See WildBlue Communications Press Release, rel. Aug. 25, 2003, <<http://www.wildblue.com/press/2003/082503.asp>>.

<sup>9</sup> Tachyon Networks Inc. has announced that its satellite broadband service is available for small to medium sized businesses in rural areas. See Tachyon Press Release, rel. May 4, 2004, <[http://www.tachyon.net/press/press\\_release\\_04\\_0504.html](http://www.tachyon.net/press/press_release_04_0504.html)>.



significant potential to bring advanced services to rural consumers.

The results of OPASTCO's survey demonstrate that advanced services are being deployed in a reasonable and timely manner in the areas served by rural ILECs. The NOI notes that the Commission's own data collection shows that deployment of high-speed and advanced services in sparsely populated areas continues to increase.<sup>10</sup> Much of the reason for this continued progress is clearly due to the laudable efforts of rural ILECs to overcome significant obstacles in order to provide these services to their customers.

**III. THE MOST IMMEDIATE ACTION THE COMMISSION CAN TAKE TO ACCELERATE DEPLOYMENT OF ADVANCED SERVICES IN AREAS SERVED BY RURAL ILECS IS TO REJECT THE UNIVERSAL SERVICE JOINT BOARD'S RECOMMENDATION TO LIMIT HIGH-COST SUPPORT TO PRIMARY LINES**

The NOI asks what actions the Commission can take to encourage the deployment of advanced services in rural areas and “remove barriers to infrastructure investment” as required by section 706 of the 1996 Act.<sup>11</sup> First and foremost, the Commission should reject the recommendation of the Federal-State Joint Board on Universal Service to limit the scope of high-cost universal service support to a single connection or “primary line” that provides access to the public telephone network.<sup>12</sup> A primary line limitation on support would undermine the underlying networks that carry advanced services. Although the universal service definition does not presently include advanced services, basic services – and the facilities needed to deliver them – must be sufficiently supported. Without sufficient support, rural carriers will lose much of their ability to make the costly and risky investments necessary to provide consumers with

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<sup>10</sup> NOI, para. 30.

<sup>11</sup> *Ibid.*, para. 36, citing 47 U.S.C. § 706(a).

<sup>12</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC

access to the modern infrastructure that is necessary to deliver high-speed and advanced services.

Rural ILECs do not build lines. They build networks. Before rural ILECs can invest in infrastructure, they must have a reasonable expectation that they will recover the costs of these networks. Section 254(b)(5) of the 1996 Act states that support should be predictable and sufficient. Limiting support to primary lines would stifle investment, since there would be no certainty as to how much support a carrier would receive and whether that support would be sufficient to recover its network costs. Furthermore, if lenders lack confidence that rural ILECs will be able to recover their costs, funds for these carriers to invest in advanced services deployment will quickly dry up.

In a separate statement to the Joint Board's recommendation, Commissioners Jonathan S. Adelstein, G. Nanette Thompson, and Bob Rowe dissented from the recommendation to limit support to a single connection. These commissioners recognized the detrimental impact a primary line limitation on support would have on rural carriers' ability to continue investing in their networks:

Telecommunications technology is advancing rapidly. If, as the Act provides, rural services are to be comparable to urban services, rural carriers must continue to invest in state-of-the-art equipment. But under the majority's primary line method, future revenues become much more uncertain... This magnification of investor risk is likely to discourage prudent carriers from installing costly new technology.<sup>13</sup>

Furthermore, Commissioners Adelstein, Thompson and Rowe noted that the 2000 Report of the Rural Task Force (RTF) recommended a "no barriers to advanced services"

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04J-1 (rel. Feb. 27, 2004), para. 56 (Joint Board Recommendation).

<sup>13</sup> Joint Board Recommendation, Joint Separate Statement of Commissioners Jonathan S. Adelstein, G. Nanette Thompson, Regulatory Commission of Alaska, and Bob Rowe, Montana Public Service Commission, Approving in Part, Dissenting in Part, p. 65 (Joint Board Dissent).

universal service policy.<sup>14</sup> The RTF's "no barriers" recommendation incorporated the following general principles:

(1) support should be provided for plant "that can, either as built or with the addition of plant elements, when available, provide access to advanced services[;]" (2) "carriers should be encouraged by regulatory measures to remove infrastructure barriers relating to access to advanced services[;]" and (3) "[t]he federal universal service support fund should be sized so that it presents no barriers to investment in plant needed to provide access to advanced services."<sup>15</sup>

As the dissenting Joint Board members astutely recognized, a primary line limitation would represent a retreat from the "no barriers to advanced services" approach to universal service:

The majority here moves away from effectuating a "no barriers" approach. By basing support on primary lines, the majority would substantially reduce the incentive for continued rural investment in any facilities by creating uncertainty of sufficient universal service funding. This is indeed a substantial barrier and one that is contrary to the spirit of the Rural Task Force Report.<sup>16</sup>

The Commission has declared that encouraging the ubiquitous availability of broadband to all Americans is a "primary policy goal."<sup>17</sup> If the Commission is serious about this goal, it must reject the ill-advised proposal to limit high-cost universal service support to primary lines, which would erect a substantial barrier to investment contrary to the directives of section 706 of the 1996 Act.

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<sup>14</sup> *Id.*, p. 66.

<sup>15</sup> *Id.*, fn. 314. See also, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, 16 FCC Rcd 6165, 6185 (2001).

<sup>16</sup> *Id.*, p. 66 (citations omitted).

<sup>17</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket No. 02-33, CC Docket Nos. 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019, 3021 (2002), para. 3: "First, it is the Commission's primary policy goal to encourage the ubiquitous availability of broadband to all Americans" (emphasis in the

**IV. IN ORDER FOR BROADBAND PENETRATION TO CONTINUE TO GROW IN RURAL AREAS, RURAL ILECS MUST RETAIN THE OPTION TO INCLUDE DSL IN REVENUE POOLS, REGARDLESS OF HOW IT IS STATUTORILY CLASSIFIED**

In the event that changes in the legal classification of wireline broadband Internet access lead to the phase-out or elimination of tariffing for DSL-based services, some type of effective pooling mechanism must remain available.<sup>18</sup> For many rural ILECs, the provision of advanced services at affordable rates would not be viable without participation in the revenue pools administered by NECA. Pooling enables these carriers to offer DSL-based services to consumers under tariffed rates that are based upon pool-wide averaged costs. Pool participants remit the revenues generated from their DSL-based services to the pool, and are able to recover their actual costs. Thus, the provision of advanced services at affordable rates in many high-cost rural areas would simply not be possible without pooling.

If a change in the legal classification of DSL led to a prohibition on tariffing, without careful planning and foresight by the Commission, many rural ILECs could find themselves without any pooling mechanism for their broadband Internet access service. This would force many high-cost rural ILECs to significantly raise the rates for their DSL-based services in order to recover their costs, which in turn may cause many current subscribers to cancel the service. In addition, these carriers would find it far more difficult, and in many cases impossible, to expand DSL-based services to consumers who are located further from the central office. Obviously, these outcomes would be

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original).

<sup>18</sup> See, OPASTCO reply comments, *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, FCC 01-360 (fil. April 22, 2002), pp. 2-5. See also, OPASTCO comments, *Appropriate Framework for Broadband Access*

antithetical to the Commission's goal of encouraging the ubiquitous availability of advanced services to all Americans. Therefore, no matter how the Commission decides to statutorily classify wireline broadband Internet access, it is imperative that rural ILECs retain a pooling option for their DSL-based services.

**V. THERE ARE ADDITIONAL ACTIONS THE COMMISSION CAN TAKE TO ACCELERATE THE DEPLOYMENT OF ADVANCED SERVICES IN RURAL SERVICE AREAS**

**A. The Commission should initiate steps to make the video market more accessible to rural ILECs**

As OPASTCO found in its recent survey of its members, carriers that bundle advanced services along with other services, such as voice and video, demonstrate higher penetration rates. Higher penetration rates, in turn, make it more economically viable for rural carriers to further their deployment of high-speed and advanced services. Rural ILECs are increasingly bundling these services with video, using either coaxial cable, DSL, or fiber, and many more are considering doing so.<sup>19</sup>

However, as OPASTCO noted in the Commission's inquiry into the state of video competition, small providers' access to video content is too often restricted.<sup>20</sup> Exclusive arrangements and inflated pricing can keep small, rural carriers from obtaining content altogether. Content providers, often through restrictive retransmission consent arrangements, frequently "tier" channels together, forcing small carriers to either purchase unwanted content along with the desired content, or to pay inflated rates for the

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*to the Internet over Wireline Facilities, et. al.*, CC Docket No. 02-33, Notice of Proposed Rulemaking, FCC 02-42 (fil. May 3, 2002), pp. 3-5.

<sup>19</sup> See, for example, Mark Heinzl, "Battling the Cable Guy: Small Phone Companies Lead In Offering Television Service Over Beefed-Up Copper Lines," *The Wall Street Journal*, Apr. 29, 2004, p. B1.

<sup>20</sup> OPASTCO Reply Comments, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 03-172, Notice of Inquiry, FCC 03-185 (fil. Sept. 26, 2003).

content necessary to attract consumers. Further, rural ILECs encounter predatory pricing by large service providers. When a rural ILEC enters a video service market dominated by a large cable company, it is not unusual for the latter to radically reduce its rates or offer steeply discounted “promotions” in the immediate vicinity of the new entrant’s service territory. The Commission should evaluate how retransmission consent practices and predatory pricing techniques impair the ability of rural ILECs to offer bundled video and advanced services.

**B. The Commission should permit accelerated depreciation for broadband infrastructure investments**

An accelerated depreciation schedule for broadband network upgrades is necessary to account for the fast obsolescence of high-tech equipment brought about by constant technological breakthroughs. Depreciation according to “Internet time” would provide rural ILECs with greater confidence that they will be able to recover their capital investments. It would also actively encourage plant upgrades, which lead to increased service quality.

**VI. Conclusion**

Rural ILECs are successfully overcoming considerable obstacles and are investing in the modern telecommunications infrastructure necessary to bring advanced services to consumers in high-cost areas. However, regulatory threats, most notably a primary line limitation on USF support and the potential loss of a pooling option for DSL services, could halt this significant progress in its tracks. The Commission should reject a primary line limitation, and ensure that the pooling option continues to be available. The Commission should also investigate obstacles that impair the ability of rural ILECs to enter the video market in order to offer bundled services. Finally, accelerated

depreciation for broadband investments would more accurately reflect today's fast-evolving technology.

Respectfully submitted,

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May 10, 2004

**Certificate of Service**

I, Stephen Pastorkovich, hereby certify that copies of OPASTCO's comments were sent on this, the 10<sup>th</sup> day of May, 2004 by first class United States mail, postage prepaid, or via electronic mail, to those listed on the attached sheet.

/s/ Stephen Pastorkovich

Stephen Pastorkovich



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